IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4962 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RANCHHODBHAI MANILAL PATEL

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR HANSA PUNANI, AGP for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 25/08/2000

ORAL JUDGEMENT

1. In this petition under Article 226 of the Constitution of India, the petitioner who is under preventive detention, has challenged the impugned order

of detention dated 22.2.2000 passed by the learned District Magistrate, Ahmedabad in exercise of powers conferred on him under sub-sec.(2) of sec.3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (No.7 of 1980) on the ground that the impugned order of detention is illegal, invalid, arbitrary and is violative of Articles 21 & 22 of the Constitution of India and, therefore, the same should be quashed and set aside.

2. Mr. H.R. Prajapati, learned counsel appearing for the petitioner has produced bunch of entire papers supplied by the detaining authority including the order of detention. Learned counsel Mr. Prajapati has taken me through the said papers while submitting the case of the petitioner on merits and has concentrated mainly on two aspects involving legal issue in the matter. He has submitted that the order of detention was passed on 22.2.2000, but the same was executed on 8.5.2000. Mr. Prajapati has further submitted that the detaining authority communicated grounds of detention to the petitioner on the day on which he was detained. He denied that the petitioner was an absconder, but according to him, the order of detention was executed late by the authority. According to Mr. Prajapati, delay in execution of detention order is not relevant at this stage because the stand taken by the petitioner is that the grounds communicated to the petitioner on 8.5.2000 are not all the grounds on which the detaining authority had arrived at a subjective satisfaction. By referring to Article 22(5) of the Constitution of India, Mr. Prajapati has submitted that all the material which weighed with the detaining authority in arriving at a subjective satisfaction and which ought to have been supplied to the petitioner-detenu, has not been supplied to him. Mr. Prajapati, after referring to certain paragraphs of the decision rendered by the Apex Court in the case of Kiritkumar Chamanlal Kundaliya v/s Union of India, reported in AIR 1981 SC 1621, has submitted that the order of detention cannot be sustained as all the grounds formulating subjective satisfaction are not communicated and supplied to the detenu nor the set of all the documents relied on by the detaining authority is supplied to the petitioner. Mr. Prajapati has taken this Court through the order dated 22.2.2000 (Annex.B) which is at page 25 and has pointed out that the statement of one Udaybhai Keshavbha Parab Maratha dated 19.1.2000 alleged to have been recorded by the learned Judicial Magistrate, First Class, Mirzapur under the provisions of sec. 164 of CrPC, has been relied on by the detaining authority, but the same was not supplied to

the petitioner. He has pointed out that the statement of a witness in a criminal case recorded by the Investigating Officer under sec.161 of CrPC and the statement recorded by the learned Judicial Magistrate, First Class under the provisions of sec.164 of CrPC, stand on different footing. Such statements do carry weight and must have weighed with the detaining authority in formulating subjective satisfaction. Hence, it would not be proper to say that this statement was not relied on by the detaining authority as one of the grounds for arriving at a subjective satisfaction.

3. It is important to note that para-21 of the detention order reveals about the written representations made by five detenues to the District Magistrate. Various dates of representations made by five different persons are mentioned in para-21 and it is mentioned in the said para that as per the averments made in the representations by those five persons, the present petitioner was working as a Factory Manager and was concerned with the production of solvent in Yash Organics Ltd. Learned District Magistrate has inferred that as the petitioner was Production Manager, transactions between Yash Organics Ltd. and Raj Chemical Factory must have been entered into within the knowledge of the present petitioner. Mr. Prajapati has rightly submitted that non-supply of copies of the representations of five different persons referred by the District Magistrate in the order of detention, is a grave error which goes to the root of the merits of the case and vitiates the order of detention. Learned AGP Mrs. Hansa Punani has submitted that names of five different persons and the facts revealed by them in their respective representations are simply referred by the detaining authority and above-referred statements are not made the basis while passing the impugned order of detention. This explanation rendered by the detaining authority and the State Government is not convincing and is not worth accepting. It is well-settled legal position that the basic documents must be supplied to the detenu and the communication of grounds should be with all details so that the detenu can make effective representation to the authorities and can pursue alternative remedy available under the Statute.

4. It is submitted by Mr. Prajapati that the impugned order of detention can be said to have been passed on one vague ground. Mr. Prajapati has pointed out, by reading para-29 of the order,that the petitioner was also involved in illegal activities by dealing with liquid solvent and was doing business of solvent even

much prior to the order of detention. Mr. Prajapati has submitted that the documents supplied to the petitioner do not contain such document on the basis of which such an observation could have been made by the detaining authority. In response to the query raised by the Court on the strength of the submissions made by learned counsel Mr. Prajapati for the petitioner, Mrs. Hansa Punani, learned AGP has admitted, on instructions, that the Directors of very company who were also detained by invoking similar provisions, are released by the Apex Court. I agree that release of the Directors is on altogether different ground, but the fact remains that the Directors are no more under detention. They were detained much earlier than the present petitioner. Mr. Prajapati has rightly relied on the decision in the case of Sophia Gulam Mohd. Bham v/s State of Maharashtra & Others, reported in (1999)6 SCC 593 while submitting that non-supply of such document or material on which detaining authority has relied, vitiates the order of detention. The Apex Court, while dealing with the provisions of Article 22(5) of the Constitution of India, has observed in paras 12 & 13 of the judgment, as under:-

"12. The above will show that when a person is detained in pursuance of an order made for preventive detention, he has to be provided the grounds on which the order was made. He has also to be afforded the earliest opportunity of making a representation against that order. Both the requirements have to be complied with by the authorities making the order of detention. These are the rights guaranteed to the person detained by this clause of Article 22 and if any of the rights is violated, in the sense that either the grounds are not communicated or opportunity of making a representation is not afforded at the earliest, the detention order would become bad. The use of the words "as soon as may be" indicate a positive action on the part of the detaining authority in supplying the grounds of detention. There should not be any delay in supplying the grounds on which the order of detention was based to the detenu. The use of the words "earliest opportunity" also carry the same philosophy that there should not be any delay in affording an adequate opportunity to the detenu of making a representation against the order of detention. The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which

the grounds are based flows from the right given to the detenu to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated to the detenu and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language.

"13. The word "grounds" used in clause (5) of Article 22 means not only the narration or conclusions of facts, but also all materials on which those facts or conclusions which constitute "grounds" are based. In Prakash Chandra Mehta v/s Commr. & Secy. , Govt of Kerala (1985 Supp.SCC 114) in which an order of detention was passed under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, this Court, while examining the concept of "grounds" used in Article 22(5), observed that the word "grounds" has to receive an interpretation which would keep it meaningfully in tune with the contemporary notions. It was explained that the expression "grounds" includes not only conclusions of facts but also all the "basic facts" on which those conclusions were founded. The "basic facts" are different from subsidiary facts or further particulars. "

In my view, the above verdict of the Apex Court is fully applicable to the facts of the present case and positively helps the case of the petitioner and, therefore, I am not inclined to accept the say of the Respondent State of Gujarat that above-referred documents mentioned in the order of detention are not the basic documents and, therefore, the formal supply of the documents to the detenu was not warranted. It is clear that the detaining authority has considered implicating confessional statement of witness recorded by the learned Judicial Magistrate, First Class, u/s 164 CrPC facts revealed in different representations made by five different persons and has accepted, without any documentary evidence, the say of the reporting authority that the petitioner was involved in similar type of activities even prior to the date on which for the first time he was found involved in the alleged activities. Undisputedly these documents were not supplied to the petitioner. Hence, the impugned order of detention requires to be quashed and set aside on the ground of non-communication of material documents.

5. Ms. Davawala, learned counsel appearing for the Union of India has nothing to submit as the grievance raised by the petitioner in this petition is mainly against the State of Gujarat and Detaining Authority.

6. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 22.2.2000 passed by the learned District Magistrate, Ahmedabad against the detenu Shri Ranchhodbhai Manilal Patel is hereby quashed and set aside. Rule is made absolute. No costs. Detenu Shri Ranchhodbhai Manilal Patel is ordered to be set at liberty forthwith if not required to be detained in any other case.

DIRECT SERVICE is permitted.

25.8.2000 [C.K. BUCH, J]
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